



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-95-5/18-PT

Date: 15 May 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Order of: 15 May 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER PURSUANT TO RULES 54 AND 70

Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of the United States of America

via the Embassy of the United States of America
to The Netherlands, The Hague

The Accused

Mr. Radovan Karadžić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seized of the Accused’s “Second Motion for Order Pursuant to Rule 70”, filed on 11 May 2009 (“Motion”), and hereby renders its decision thereon.

I. Submissions

1. In his Motion, the Accused requests the Trial Chamber to issue an order pursuant to Rules 54 and 70 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) to the effect that the provisions of Rule 70 should apply to any information provided by Mr. Lawrence Butler, an official of the Government of the United States of America (“U.S. Government”) in an interview with the Accused’s legal associate;¹

2. The Accused submits that he wishes to interview Mr. Butler about his recollection of the discussion at the meeting at which the alleged “Holbrooke agreement” was negotiated and the existence of notes, reports, or memoranda of the meeting.² He maintains that “[t]he relevance of the material sought has already been recognized by the Trial Chamber in its *Decision on Accused’s Second Motion for Inspection and Disclosure: Immunity Issue*”.³

3. In its Invitation to the United States of America pursuant to Rules 54 and 70, filed on 12 May 2009 (“Invitation”), the Trial Chamber invited the U.S. Government to assist the Chamber with information on its communication with the Accused to the effect that it has consented to produce the information sought through Mr. Butler on the condition that the provisions of Rule 70 will apply. On 14 May 2009, the U.S. Government submitted that it had informed the Accused’s legal associate on 7 May 2009 that “the United States has started the process of making the U.S. official requested available for an interview” and that “prior to providing any information, either through an interview or in documentary form, we require that [the Accused] obtain an order that applies Rule 70 to that information”⁴

4. The Office of the Prosecutor has indicated that it does not intend to respond to the Motion.

¹ Motion, para. 1.

² Motion, para. 7.

³ Motion, para. 8, *see also Prosecutor v. Karadžić, case No. IT-95-5/18-PT*, Decision on Accused’s Second Motion for Inspection and Disclosure: Immunity Issue, 17 December 2008, para. 21.

⁴ Correspondence from the United States, filed on 14 May 2009, p. 1.

II. Applicable Law

5. Rule 70 of the Rules creates an incentive for co-operation by States, organisations, and individuals, by allowing them to share sensitive information with the Tribunal “on a confidential basis and by guaranteeing information providers that the confidentiality of the information they offer and of the information’s sources will be protected”.⁵

6. Paragraphs (B) through (E) of Rule 70 relate to material in the possession of the Office of the Prosecutor, and paragraph (F) provides for the Trial Chamber to order that the same provisions apply *mutatis mutandis* to specific information in the possession of the Defence.

7. The Appeals Chamber has interpreted Rule 70(F) as “enabling the Defence to request a Trial Chamber that it be permitted to give the same undertaking as the Prosecution to a prospective provider of confidential material that that material will be protected if disclosed to the Defence”, and has held that the purpose of the Rule is “to encourage third parties to provide confidential information to the defence in the same way that Rule 70(B) encourages parties to do the same for the Prosecution”,⁶ a purpose which is served by explicitly affirming the applicability of Rule 70 to confidential material provided to the Defence.⁷

III. Discussion

8. The Trial Chamber considers that it must be in a position to assess whether the provider has consented to produce the information requested by the Accused. Upon receipt of the submissions from the U.S. Government, the Trial Chamber is satisfied that it has consented to provide any information responsive to the Accused’s request, so long as there is an order from the Chamber that applies Rule 70 to that information.

9. The Trial Chamber recalls that by granting the Motion and making an order under Rule 70(F) it does not make a determination as to the relevancy of the information in the present case.

⁵ *Prosecutor v. Milošević*, Case Nos. IT-02-54-AR108bis & IT-02-54-AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002, para. 19.

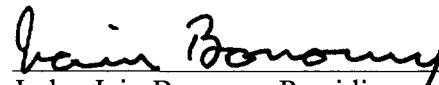
⁶ *Prosecutor v. Orić*, Case No. IT-03-68-AR73, Public Redacted Version of the Decision on Interlocutory Appeal Concerning Rule 70, 26 March 2004, para. 6.

⁷ *Ibid.*, paras.6–7.

IV. Disposition

10. Accordingly, the Trial Chamber, pursuant to Rules 54 and 70 of the Rules, hereby:
- a. **GRANTS** the Motion; and
 - b. **ORDERS** that the provisions of Rule 70 of the Rules shall apply *mutatis mutandis* to any information provided by Mr. Lawrence Butler during any interview to be conducted by the Accused's legal associate.

Done in English and French, the English text being authoritative.


Judge Iain Bonomy, Presiding

Dated this fifteenth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]